

**UTILITY FACILITY REVIEW BOARD**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Tilton**

Senate Sponsor: Gregory S. Bell

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**LONG TITLE**

**General Description:**

This bill amends Title 54, Chapter 14, Electrical Facility Review Board Act, to apply to a gas corporation.

**Highlighted Provisions:**

This bill:

- ▶ applies the provisions of Title 54, Chapter 14, Electrical Facility Review Board Act, to a gas corporation;
- ▶ reduces the time within which the board must issue a written decision; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

**54-14-101**, as enacted by Chapter 197, Laws of Utah 1997

**54-14-102**, as enacted by Chapter 197, Laws of Utah 1997

**54-14-103**, as enacted by Chapter 197, Laws of Utah 1997

**54-14-301**, as enacted by Chapter 197, Laws of Utah 1997

**54-14-305**, as enacted by Chapter 197, Laws of Utah 1997

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **54-14-101** is amended to read:

## CHAPTER 14. UTILITY FACILITY REVIEW BOARD ACT

### Part 1. General Provisions

#### **54-14-101. Title.**

This chapter is known as the [~~Electrical~~] "Utility Facility Review Board Act."

Section 2. Section **54-14-102** is amended to read:

#### **54-14-102. Legislative findings.**

(1) (a) The Legislature finds that the construction of [~~transmission lines and substations by electrical corporations that are~~] facilities by public utilities under this title is a matter of statewide concern.

(b) The construction of these facilities may affect the safety, reliability, adequacy, and efficiency of service to customers in areas within the jurisdiction of more than a single local government.

(c) Excess costs imposed by requirements of a local government for the construction of facilities may affect either the rates and charges of the public utility to customers other than customers within the jurisdiction of the local government or the financial viability of the public utility, unless the local government pays for those excess costs.

(2) The Legislature finds that it is in the public interest to establish the [~~Electrical~~] Utility Facility Review Board to resolve issues regarding the construction and installation of [~~transmission lines and substations by any electrical corporation that is a~~] public utility facilities.

Section 3. Section **54-14-103** is amended to read:

#### **54-14-103. Definitions.**

As used in this chapter:

(1) "Actual excess cost" means the difference in cost between:

(a) the standard cost of a facility; and

(b) the actual cost of the facility, including any necessary right-of-way, as determined in accordance with Section 54-14-203.

(2) "Board" means the [~~Electrical~~] Utility Facility Review Board.

(3) "Commencement of construction of a facility" includes the project design and the ordering of materials necessary to construct the facility.

(4) "Estimated excess cost" means any material difference in estimated cost between the costs of a facility, including any necessary right-of-way, if constructed in accordance with the requirements of a local government and the standard cost of the facility.

(5) "Facility" means a transmission line ~~[or]~~, a substation, a gas pipeline, a tap, a measuring device, or a treatment device.

(6) (a) "Gas pipeline" means equipment, material, and structures used to transport gas to the public utility's customers, including:

(i) pipe;

(ii) a compressor;

(iii) a pressure regulator;

(iv) a support structure; and

(v) any other equipment or structure used to transport or facilitate transportation of gas through a pipe.

(b) "Gas pipeline" does not include a service line.

~~[(6)]~~ (7) "Local government":

(a) means a city or town as defined in Section 10-1-104 or a county~~[-Hf]~~; or

(b) may refer to one or more of the local governments in whose jurisdiction a facility is located if a facility is proposed to be located in more than one local government jurisdiction[;  
~~"local government" may refer to one or more of the local governments in whose jurisdiction the facility is located].~~

~~[(7)]~~ (8) "Pay" includes, in reference to a local government paying the actual excess cost of a facility, payment by:

(a) a special district created by the local government; or

(b) a private entity other than the public utility pursuant to a regulation or decision of the local government.

~~[(8)]~~ (9) (a) "Standard cost" means the estimated cost of a facility, including any

necessary right-of-way, if constructed in accordance with:

(i) the public utility's normal practices; and

(ii) zoning, subdivision, and building code regulations of a local government, including siting, ~~[setbacks]~~ setback, screening, and landscaping requirements:

(A) imposed on similar land uses in the same zone; and

(B) that do not impair the ability of the public utility to provide service to its customers in a safe, reliable, adequate, and efficient manner.

(b) With respect to a transmission line, "standard cost" is the cost of any overhead line constructed in accordance with the public utility's normal practices.

(c) With respect to a facility of a gas corporation, "standard cost" is the cost of constructing the facility in accordance with the public utility's normal practices.

~~[(9)]~~ (10) (a) "Substation" means a separate space within which electric supply equipment is located for the purpose of switching, regulating, transforming, or otherwise modifying the characteristics of electricity, including:

(i) electrical equipment such as transformers, circuit breakers, voltage regulating equipment, buses, switches, capacitor banks, reactors, protection and control equipment, and other related equipment;

(ii) the site at which the equipment is located, any foundations, support structures, buildings, or driveways necessary to locate, operate, and maintain the equipment at the site; and

(iii) the structure intended to restrict access to the equipment to qualified persons.

(b) "Substation" does not include a distribution pole-mounted or pad-mounted transformer that is used for the final transformation of power to the voltage level utilized by the customer.

~~[(10)]~~ (11) "Transmission line" means an electrical line, including structures, equipment, plant, or fixtures associated with the electrical line, operated at a nominal voltage of 34,000 volts or above.

Section 4. Section **54-14-301** is amended to read:

**54-14-301. Creation, purpose, and composition of board.**

(1) The ~~[Electrical]~~ Utility Facility Review Board is created within the Department of Commerce to resolve disputes between local governments and public utilities regarding the siting and construction of ~~[electrical]~~ facilities as provided in this part.

(2) The board shall be composed of:

(a) the three members of the commission;

(b) an individual appointed by the governor from a list of nominees of the Utah League of Cities and Towns; and

(c) an individual appointed by the governor from a list of nominees of the Utah Association of Counties.

(3) The chair of the commission shall serve as chair of the board.

(4) Members of the commission shall serve as members of the board during their terms of office as commissioners and until their successors on the commission have been appointed and taken office.

(5) (a) Members of the board who are not commissioners:

(i) shall have four-year terms, except the initial term of the individual first appointed by the governor from nominees of the Utah Association of Counties shall be two years;

(ii) may be appointed for one succeeding term; and

(iii) may continue to serve until their successor takes office.

(b) Vacancies in the board of members who are not commissioners shall be filled for the unexpired term.

(6) Three members of the board ~~[shall]~~ constitute a quorum.

(7) A member of the board may be removed for cause by the governor.

(8) (a) (i) Members who are not state or local government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per

diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from their employer for their service on the board may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 5. Section **54-14-305** is amended to read:

**54-14-305. Written decisions of board.**

(1) The board shall issue a written decision on the review expeditiously and, in any event, not later than ~~[140]~~ 45 days following the initial hearing.

(2) The written decision shall:

(a) specify whether the facility should be constructed and, if so, whether any requirements or conditions imposed by the local government may not be imposed because they impair the ability of the public utility to provide safe, reliable, and adequate service to its customers; and

(b) resolve any dispute regarding:

(i) the standard cost or estimated excess cost of the facility;

(ii) the date on which construction of the facility should commence in order to avoid a significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;

(iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government

reasonable time to pay for any estimated excess cost; or

(iv) apportionment of the actual excess cost of the facility between the local government and the public utility pursuant to Subsection 54-14-303(7).

(3) If the board determines that a facility that a local government has prohibited should be constructed, the written decision shall specify any general location parameters required to provide safe, reliable, adequate, and efficient service to the customers of the public utility.

(4) The written decision shall leave to the local government any issue that does not affect the provision of safe, reliable, adequate, and efficient service to customers of the public utility or that does not involve an estimated excess cost.

(5) With respect to local government requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate service to the customers of the public utility, the written decision shall leave each siting issue to the local government except determination of the estimated excess cost and determination of when the construction of the facility should commence.

(6) In determining when the construction of the facility should commence, the board shall consider whether the public utility sought a permit, authorization, approval, exception, or waiver from the local government in a timely manner based upon reasonably foreseeable conditions, and, if the board determines that the public utility did not do so, it shall allow sufficient time for the local government to pay any actual excess cost that may be imposed as a result of requirements or conditions the local government has imposed that do not impair the provision of safe, reliable, and adequate service to customers of the public utility.